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Book Note

THE REGULATORY AFTERMATH OF THE GLOBAL FINANCIAL CRISIS, by Eilís Ferran, Niamh Moloney, Jennifer G. Hill, and John C. Coffee, Jr.¹

REUBEN ZARAMIAN

THE TURMOIL THAT ERUPTED after global markets crashed in 2008² opened the way for a rush of regulatory reforms at nearly every level of government and industry. In *The Regulatory Aftermath of the Global Financial Crisis*, Ferran et al detail these worldwide developments, focusing particularly on changes in the European Union, Australia, and the United States.

Ethiopsis Tafara opens the monograph³ with a broad and insightful analysis of what exactly went wrong on a macro level, and offers a task list of changes needed to stabilize the regulatory framework. At its simplest, the 2008 crisis was caused by markets and financial services evolving where systems and facilities did not. Capital markets today are not quite what they were a few decades ago. The market is now “global in nature”; “characterized by fierce competition” between financial service providers; “no longer features barriers between ... products, sectors and actors”; features increasing costs of “monitoring conduct and risk”; and “features large and relatively liquid unregulated institutional financial markets.”⁴ In line with what has been said by a host of economists and regulators,⁵ Tafara suggests that

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1. (Cambridge: Cambridge University Press, 2012) 391 pages.
 2. Sometimes referred to as the ‘Great Recession.’ See David Wessel, “Did ‘Great Recession’ Live Up to the Name?”, *The Wall Street Journal* (8 April 2010) online: <<http://on.wsj.com/1ihDKux>>. Also referred to as the ‘Lesser Depression.’ See Paul Krugman, “The Lesser Depression”, *The New York Times* (21 July 2011) online: <<http://nyti.ms/19rImGy>>.
 3. *Ibid* at xi.
 4. *Ibid* at xi-xxiii.
 5. A vast amount of research and commentary has been published on this topic. See especially, Viral V Acharya & Matthew Richardson, *Restoring Financial Stability: How to Repair a Failed System* (Hoboken: John Wiley & Sons, 2009); Paul Krugman, *The Return of Depression Economics and the Crisis of 2008* (New York: WW Norton, 2009); David Wessel, *In Fed We*

these deviations “require an equivalent shift in regulatory approach.”⁶

The first chapter⁷ starts out with the premise that imperfections in regulatory reform are inevitable; it is vital to evaluate the processes used during and after transformation efforts.⁸ Eilís Ferran presents a comprehensive overview of EU post-crisis financial services law reform, but readily admits her focus is “selective.”⁹ Ferran’s interest lies in the factors contributing to the “post-crisis regulatory agenda.”¹⁰ She considers the “preferences of the key opinion-formers,” and determines which of those have materialized into law and which have been “filtered out.”¹¹ Ferran suggests that the “logical end point is a pan-European system of regulation and supervision with national supervisors reduced mostly to a branch office role”—with a greater role being played by the European Commission.¹²

In the second chapter,¹³ Niamh Moloney considers post-crisis reforms in the EU “from a regulatory design perspective,” and examines the legacy of those reforms.¹⁴ Moloney suggests that the “key regulatory innovation” has been addressing financial market intensity and financial market innovation.¹⁵ She describes this effect as significantly expanding the breadth of market regulation. With respect to consumer protection regulation, the effect has been the introduction of new “retail market regulatory tools related to product intervention,”¹⁶ such as restricting markets for financial instruments that might raise investor protection concerns.¹⁷ Moloney concludes with the evaluation that these “innovations are neither wholly good nor wholly bad.”¹⁸

Trust: Ben Bernanke’s War on the Great Panic (New York: Crown Business, 2009).

6. *Supra* note 1 at xii.

7. Eilís Ferran, “Crisis-driven regulatory reform: where in the world is the EU going?” in Ferran et al, *supra* note 1 at 1.

8. *Ibid* at 5-6.

9. *Ibid* at 8.

10. *Ibid*.

11. *Ibid*.

12. *Ibid* at 108-09.

13. Niamh Moloney, “The legacy effects of the financial crisis on regulatory design in the EU?” in Ferran et al, *supra* note 1 at 111.

14. *Ibid*.

15. *Ibid* at 112.

16. *Ibid* at 202.

17. *Ibid* at 190.

18. *Ibid* at 202.

In chapter three,¹⁹ Jennifer Hill sets out to correct the self-laudatory position of Australian government officials in their assessment of how well Australia fared during the crisis. Part I explores Australia's experience of, and response to, the crisis, while Part II provides an overview of the country's market regulation. Part III looks at the role of regulation through the crisis period. Part IV looks at supranational agreements, and Part V considers recent regulatory reforms. By the end of Part VI, Hill demonstrates that Australia's performance was due to its strong pre-crisis position, as well as a range of contributing economic, legal, and regulatory factors.

In the final chapter,²⁰ John Coffee, Jr. attempts to highlight the oppositional perspectives of those involved in the debate on regulatory reform. His project is to demonstrate that the 2008 crisis is "being wasted"²¹—that history repeats itself when it is ignored.²² Coffee takes issue with what he calls the "'Tea Party Caucus' of corporate and securities law professors,"²³ arguing that their position is fundamentally unsound. In Part II, he shows how financial reform legislation is and can be "frustrated" by opponents.²⁴ Part III demonstrates how the 2002 *Sarbanes-Oxley Act*²⁵ has been diminished "at the implementation stage."²⁶ Part IV examines the policy considerations that inspired the 2010 *Dodd-Frank Act*,²⁷ and Part V considers the implementation of that *Act*.

Having read through the wealth of material presented by these leading scholars, readers would be well served to revisit Tafara's prescient foreword, which insists on a program of regulatory change "types" needed—and detailed in subsequent chapters—to make world markets stronger than before. This collection of essays is cohesive in its argument and masterful in its presentation of details. Light reading it is not.

19. Jennifer G Hill, "Why did Australia fare so well in the global financial crisis?" in Ferran et al *supra* note 1 at 203.

20. John C Coffee, Jr, "The political economy of Dodd-Frank: Why financial reform tends to be frustrated and systemic risk perpetuated" in Ferran et al, *supra* note 1 at 301.

21. *Supra* note 1 at 312.

22. *Ibid* at 368.

23. The Caucus consists of Roberta Romano, Yale Law School; Stephen Bainbridge, UCLA Law School; and Larry Ribstein, University of Illinois College of Law. In Coffee's view, the Caucus members together believe that: (1) "Congress should not legislate after market crashes"; (2) "state laws are superior to federal law in regulating corporate governance"; and (3) "federal securities law should ... not attempt substantive regulation of corporate governance." *Ibid* at 306-07.

24. *Ibid* at 311.

25. *Sarbanes-Oxley Act of 2002*, PL 107-204, 116 Stat 745.

26. *Supra* note 2 at 311.

27. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub L No 111-203, 124 Stat 1376 (2010).